

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF PUERTO RICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 v.

6 CRIMINAL : 11-226 (CCC)

7 RAYLIN FRANCISCO BERROA
8 SÁNCHEZ,

9 Defendant.

10
11 MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
RE: RULE 11(c)(1)(B) PROCEEDINGS (PLEA OF GUILTY)

12 **I. Procedural Background**

13 On June 9, 2011, Raylin Francisco Berroa Sánchez (hereinafter referred to as "defendant"),
14 assisted and represented by counsel, waived his right to be charged by means of an indictment,
15 consented to the filing of an information, and entered a guilty plea as to count one of the information.
16 Count one charges that on or about April 14, 2011, in the District of Puerto Rico and within the
17 jurisdiction of this court, Raylin Francisco Berroa Sánchez, defendant, an alien who, having previously
18 been deported and removed, did knowingly attempt to enter into the United States, without having
19 obtained, prior to his re-embarkation from a place outside the United States, the express consent of the
20 Attorney General, or his successor, the Secretary of Homeland Security, acting through the Under
21 Secretary for Border and Transportation Security pursuant to Title 6, United States Code, Sections
22 202(3), 202(4) and 557, to reapply for admission into the United States, all in violation of Title 8,
23 United States Code, Section 1326(a)(2).

24 **II. Consent to Proceed Before a Magistrate Judge**

25 In open court the defendant was questioned as to the purpose of the hearing being held and was
26 advised of: (a) the nature and purpose of the hearing; (b) the fact that all inquiries were to be conducted
27 under oath and that it was expected that his answers would be truthful; (c) the potential consequences

1 of lying under oath (such as a perjury charge); and (d) his right to have the entry of plea proceedings
 2 presided by a district judge instead of a magistrate judge. The defendant was also explained the
 3 differences between the appointment and functions of the two. The defendant consented to proceed
 4 before the undersigned magistrate judge.

5 **III. Proceedings Under Rule 11, Federal Rules of Criminal Procedure**

6 **A. Rule 11(c)(1) Requirements**

7 Rule 11 of the Federal Rules of Criminal Procedure governs the acceptance of
 8 guilty pleas to federal criminal violations. Pursuant to Rule 11, in order for a plea of
 9 guilty to constitute a valid waiver of the defendant's right to trial, guilty pleas must be
 10 knowing and voluntary: "Rule 11 was intended to ensure that a defendant who pleads
 11 guilty does so with an 'understanding of the nature of the charge and consequences of
 12 his plea.'" United States v. Cotal-Crespo, 47 F.3d 1, 4 (1st Cir. 1995) (quoting
 13 McCarthy v. United States, 394 U.S. 459, 467 (1969)). [There are three core concerns
 14 in these proceedings]: 1) absence of coercion; 2) understanding of the charges; and 3)
 15 knowledge of the consequences of the guilty plea. United States v. Cotal-Crespo, 47
 16 F.3d at 4 (citing United States v. Allard, 926 F.2d 1237, 1244-45 (1st Cir. 1991)).

17 United States v. Hernández-Wilson, 186 F.3d 1, 5 (1st Cir. 1999).

18 **B. Admonishment of Constitutional Rights**

19 To assure defendant's understanding and awareness of his rights, defendant was advised of his
 20 right:

21 1. To remain silent at trial and be presumed innocent, since it is the government who has the
 22 burden of proving him guilty beyond a reasonable doubt.

23 2. To testify or not to testify at trial, and that no adverse inference could be made in relation
 24 to his decision not to testify.

25 3. To a speedy trial before a district judge and a jury, at which he would be entitled to see and
 26 cross examine the government witnesses, present evidence on his behalf, and challenge the
 27 government's evidence.

28 4. To have a unanimous verdict rendered by a jury of twelve persons which would have to be
 29 convinced of defendant's guilt beyond a reasonable doubt by means of admissible evidence.

30 5. To use the subpoena power of the court to compel the attendance of witnesses.

2 Upon listening to the defendant's responses, observing his demeanor and his speaking with his
3 attorney, that to the best of counsel's belief defendant had fully understood his rights, it is determined
4 that defendant is aware of his constitutional rights.

5 **C. Consequences of Pleading Guilty**

6 Upon advising defendant of his constitutional rights, he was further advised of the consequences
7 of pleading guilty. Specifically, defendant was advised that by pleading guilty and upon having his
8 guilty plea accepted by the court, he will be giving up the above rights and will be convicted solely on
9 his statement that he is guilty.

10 Furthermore, the defendant was admonished of the fact that by pleading guilty he would not be
11 allowed later on to withdraw his plea because he eventually might disagree with the sentence imposed,
12 and that if he violates the conditions of supervised release, that privilege could be revoked and he could
13 be required to serve an additional term of imprisonment. He was also explained that parole has been
14 abolished.

15 In response to further questioning, defendant was explained and he understood that if convicted
16 on count one he will face a term of imprisonment of not more than two (2) years, a fine not to be greater
17 than two hundred fifty thousand dollars (\$250,000.00), or both, and a term of supervised release of not
18 more than one (1) year.

19 The defendant was advised that the ultimate sentence was a matter solely for the court to decide
20 in its discretion and that, even if the maximum imprisonment term and fine were to be imposed upon
21 him, he later could not withdraw his guilty plea for that reason alone. The defendant understood this.

22 The defendant acknowledged that at this stage no guarantees or promises as to the sentence to
23 be imposed had been made to him. The defendant was also explained what the supervised release term
24 means and was urged to cooperate with the United States Probation Office.

2
D. Plea Agreement¹3
The parties have entered into a written plea agreement that, upon being signed by the
4 government, defense attorney and defendant, was filed and made part of the record. Defendant was
5 clearly warned and recognized having understood that:6
1. The plea agreement is not binding upon the sentencing court.7
2. The plea agreement is an agreement between the defendant, defense counsel and the
8 attorney for the government which is presented as a recommendation to the court in regards to the
9 applicable sentencing adjustments and guidelines, which are advisory.10
3. The agreement provides a sentencing recommendation and/or anticipated sentencing
11 guideline computation, that can be either accepted or rejected by the sentencing court.12
4. In spite of the plea agreement and any sentencing recommendation contained therein, the
13 sentencing court retains full discretion to reject such plea agreement and impose any sentence up to the
14 maximum possible penalty prescribed by statute.15
Defendant acknowledged having understood this explanation.16
E. Government's Evidence (Basis in Fact)17
The government presented a proffer of its evidence consistent with the version of facts of the
18 plea agreement with which the defendant concurred. Accordingly, it is determined that there is a basis
19 in fact and evidence to establish all the elements of the offense charged.20
F. Voluntariness21
The defendant accepted that no threats had been made to induce him to plead guilty and that he
22 did not feel pressured to plead guilty.23
G. Waiver of Appeal24
The defendant was explained, and he understood, that if the court accepts the plea agreement
25 and sentences him according to its terms and conditions, he will be surrendering his right to appeal the
26 sentence and judgment in this case.27
128
"Plea agreement" refers to the agreement and its supplement.

1

5

2 **IV. Conclusion**

3 The defendant, by consent, has appeared before me pursuant to Rule 11, Federal Rules of
4 Criminal Procedure, and has entered a plea of guilty as to count one of the information. After
5 cautioning and examining the defendant under oath and in open court, concerning each of the subject
6 matters mentioned in Rule 11, as described in the preceding sections, I find that defendant Raylin
7 Francisco Berroa Sánchez is competent to enter this guilty plea, is aware of the nature of the offense
8 charged and the maximum statutory penalties that the same carries, understands that the charge is
9 supported by the government's evidence, has admitted to every element of the offense charged, and has
10 done so in an intelligent and voluntary manner with full knowledge of the consequences of his guilty
11 plea. Therefore, I recommend that the court accept the guilty plea of the defendant and that the
12 defendant be adjudged guilty as to count one of the information.

13 This report and recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B). Any objections
14 to the same must be specific and must be filed with the Clerk of Court within fourteen (14) days of its
15 receipt. Fed. R. Civ. P. 72(b). Failure to timely file specific objections to the report and
16 recommendation is a waiver of the right to review by the district court. United States v. Valencia-
17 Copete, 792 F.2d 4 (1st Cir. 1986).

18 SO RECOMMENDED.

19 In San Juan, Puerto Rico, this 17th day of June 2011.

20

s/Marcos E. López
21 U. S. MAGISTRATE JUDGE

22

23

24

25

26

27

28